Decision No. ✓

Decision No. 1863

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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ORIGINAL

In the Matter of the Application of the SOUTHERN PACIFIC COMPANY for authority under Section 27 of the Public Utilities Act, to charge and collect within the limits of the city of Oakland fares in excess of 5 cents for one continuous ride in the same direction within the corporate limits of said city of Oakland.	Application No. 860.
In the Matter of the Application of the SOUTHERN PACIFIC COMPANY for authority under Section 63 of the Public Utilities Act, to increase the individual monthly commutation fares between San Francisco, Oakland and Havenscourt, California.	Application No. 861.
In the Matter of the Application of SOUTHERN PACIFIC COMPANY for an order increasing its passenger fares between San Francisco and Alameda County points and between points within the County of Alameda.	Application No.1105.
FOOTHILL IMPROVEMENT CLUB, Complainant, vs. SOUTHERN PACIFIC COMPANY, Defendant.	Case No. 517.
HENRY WARFIELD, Complainant, vs. SOUTHERN PACIFIC RAILROAD COMPANY, Defendant.	Case No. 519.

C. W. Durbrow for applicant and defendant.
Guy C. Earl and Chaffee E. Hall for protestants and complainant.
Ben F. Woolner and J. J. Earle for City of Oakland, intervenor.
Frank B. Cornish for City of Berkeley, Intervenor.

ESHLEMAN and GORDON, Commissioners.

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O P I N I O N.

These five proceedings taken together involve all of the commutation rates between San Francisco and Alameda County points in the cities of Oakland, Alameda and Berkeley as well as certain local rates within those cities.

Application No. 860, filed on ~~October~~ Nov 29 10, 1913, by the Southern Pacific Company, hereinafter called the Company, asks for authority to maintain for the transportation of passengers on its lines between points within the City of Oakland a fare greater than 5 cents. Section 12 of the Public Utilities Act provides that the fares charged between two points within a municipality shall not exceed 5 cents, unless the Railroad Commission so orders. The Company desires to charge more than 5 cents between points on the so-called Melrose extension and certain other designated points in the City of Oakland.

The Oakland Chamber of Commerce and the East Oakland Protective League protested against the granting of this application and asked the Commission to require the Company to desist from charging or collecting more than 5 cents for one continuous ride in the same general direction within the limits of the City of Oakland, alleging that higher fares than 5 cents within the limits of the City of Oakland are unjust, unreasonable and discriminatory.

The Company, in its answer to the protests of the Oakland Chamber of Commerce and the East Oakland Protective League, denies that the fares complained of are unjust, unreasonable or discriminatory or that it is a street railroad, and asks for an order authorizing an increase in fares between all points in Oakland, Berkeley and Alameda and San Francisco.

Application No. 861, filed ~~October~~ Nov 29 8, 1913, asks permission to increase the individual monthly commutation fares between San Francisco, Oakland and West Oakland on the one hand and Havenscourt on the other. The Company alleges that it desires to establish

the proposed changes in comformity to an understanding reached between it and parties interested in Havenscourt property.

The Oakland Chamber of Commerce and the East Oakland Protective League, on April 20, 1914, filed a protest against the proposed increases and in addition a cross-complaint against the Company's one-way fare between points on the Seventh Street line greater than 5 cents and against the individual monthly commutation fares and one-way fares between San Francisco and all stations on the Seventh Street line greater than $3.00 for commutation per month and 10 cents for single one-way fares. These protestants ask the Commission to establish, first, a fare for one-way, first-class continuous trip of 5 cents between all stations on the Seventh Street line, including that part of this line known as the Melrose extension; second, one-way, first-class continuous trip fare of 10 cents between all stations on the Seventh Street line, including that part of this line known as the Melrose extension and the City of San Francisco; and, third, individual monthly commutation fare of $3.00 between all points on the Seventh Street line, including that part of this line known as the Melrose extension and the City of San Francisco.

The Company in answer to the protest and cross-complaint alleges that the fares therein questioned are unduly low, non-compensatory, and confiscatory, and in addition that all of its fares between San Francisco and all points served by its electric lines in Alameda County and between stations in Oakland and Alameda County are unduly low, non-compensatory and confiscatory, and that the revenue therefrom is insufficient to pay the cost of operation. The Company asks to increase all of its fares between San Francisco and points served by its electric lines in Alameda County and between all points in Oakland and all points in Alameda County to a basis which to the Commission shall be found to be just and reasonable.

Application No. 1105, filed April 29, 1914, asks for authority for the Company to increase its passanger fares between

San Francisco and Alameda County points and between points within the County of Alameda, alleging that the present fares are unduly low, non-compensatory and confiscatory. This application embraces all of the issues raised in the preceding applications outlined herein and the two cases following.

Case No. 517 is a complaint filed by the Foothill Improvement Club against the Southern Pacific Company on December 11, 1913, wherein it puts in issue the reasonableness of the one-way and monthly commutation fares between San Francisco and Havenscourt, Yokum Avenue and Parker Avenue. It is also alleged in this complaint that the fares attacked are discriminatory.

Case No. 519 is a complaint of Henry Warfield, filed December 15, 1913, wherein this complainant calls in question the one-way and monthly commutation fares between Dutton Avenue and San Francisco and the one-way fares between Dutton Avenue and Oakland. In this complaint the adequacy of the service of the Company between San Francisco and Dutton Avenue is also placed in issue, the contention being that an unnecessary transfer is required at Melrose and no trains are run between San Francisco and Dutton Avenue after 9 P.M. The Commission is asked to re-adjust the fares complained of and to require the Company to run through trains between San Francisco and Dutton Avenue by way of Alameda Mole and continue such service until 11 o'clock P.M. of each day.

The City of Oakland has intervened in all of these cases except Case No. 519.

The importance of these cases, both to the Company and its patrons cannot be overestimated. On the one hand we have the contention of the Company that it is required not only to forego a reasonable return on the property devoted to this service but actually to conduct this service at an operating loss. On the other hand, in behalf of the patrons of the Company, it is urged that the rates existing between San Francisco and Alameda County points are of long standing and that any increase therein will work a great

hardship upon the residents of these cities.

A careful and bona fide effort on the part of the Company has been made to show the real conditions surrounding the service here performed and much testimony and many intricate tabulations accompanied by statistical data have been presented. We have given the case a great deal of study and we feel that its importance requires that a resume of the evidence be herein set out.

The testimony shows that for many years the Company has maintained the ferry and suburban service here involved and has charged the uniform rate of 10 cents for one-way fares and $3.00 per month for commutation. Up to a few years ago steam equipment was used in conjunction with the ferry boats, but at the present time all of the lines have been electrized. The Company operates the following lines in Alameda County devoted to suburban traffic solely:

1. Shattuck Ave.-Berkeley Line. This line operates from Oakland Pier to Thousand Oaks via Shattuck Avenue, Berkeley, a distance of 8.34 miles.

2. Ellsworth St., Berkeley Line, operating from Oakland Pier over the same line as the Shattuck Ave. trains to Ellsworth Junction, thence branching off and operating along Ellsworth St. The total length of this line from Oakland Pier to its terminus, the Berkeley Campus, 6.81 miles.

3. California St., Berkeley Line, runs from Oakland Pier via the same line as the Shattuck Ave. trains take to California Junction near 61st St., thence along California St. to Thousand Oaks tying in to the Shattuck Avenue line. The distance of this line from Oakland Pier to its terminus is 8.7 miles.

4. 9th St. Line. This line operates from Oakland Pier via the same line as the Shattuck Avenue trains take to 9th St. Junction in Emeryville, thence along 9th St., Berkeley to Albany and around a loop to Thousand Oaks, making a connection with the California St. and Shattuck Avenue line at that point.

5. 7th St. Line. This line runs from Oakland Pier to Dutton Avenue, Oakland, near the boundary line of the City of San Leandro via 7th St., Oakland, branching off just beyond Sather and going through Melrose and Havenscourt. The distance from Oakland Pier to Dutton Avenue is 11.99 miles.

6. Peninsular Railway, from 16th St. Pier, Oakland, to 14th & Franklin Sts. This line operates along 19th and 20th Sts. and for a part of the distance on 21st St. and along Franklin St. connecting with 16th St. depot and 14th & Franklin St. depot. The length of this line if 2.26 miles.

7. Alameda Horse Shoe Line. This line operates from Oakland Pier via the 7th St. route to Fruitvale, thence around the loop and along Lincoln Avenue to Pacific Junction, a distance of 10.28 miles.

8. Cross-town Street Car Line. This line uses the tracks of the Peninsular Railway between 16th St. Pier and 14th and Franklin Sts., thence along the 14th & Franklin St. route until the draw bridge is crossed, thence across the marsh and along Encinal Avenue around the loop beyond High St. and back via the Park St. station and Lincoln Avenue, a distance of 10.77 miles.

9. The 14th St. Line runs from Alameda Pier to 14th and Franklin Sts., a distance of 4.15 miles.

10. The Encinal Avenue, Alameda Line, runs from Alameda Pier via Central and Encinal Avenuesto Lincoln Park beyond High St., Alameda, a distance of 7.17 miles.

11. The Lincoln Avenue Line runs from Alameda Pier via Lincoln Avenue to Lincoln Park, at that point tying in to Encinal Avenue line at Lincoln Park, a distance of 7.35 miles.

Generally speaking it may be said that a 20-minute service until 8:20 at night is maintained on all of the lines by way of the Oakland Pier route, and a 30-minute service by way of the various lines through Alameda Pier during the day and a 45-minute service during

the evening hours. In addition to this there is a cross-town service between Oakland and Alameda. During certain hours of the day when traffic is heaviest the service is augmented by express trains. The suburban trains are operated at high speed and stop only at regular stations, with the exception of the street car service in Oakland and Alameda. The traffic is extremely heavy during two hours in the morning and evening due to the heavy commutation traffic of persons residing in Alameda County and having their places of business in San Francisco.

The crew operating these trains, in addition to the motorman, consists on the average of one man for each car. The wages paid are from 58 to 60 cents per hour for conductors, 62½ cents per hour for motormen, and 30 cents per hour for gatemen and collectors. When the gateman performs the duties of brakeman the wages are at the rate of $90.00 per month.

The equipment is all modern steel construction.

Most of the lines of the Company are in direct competition with the lines of the San Francisco-Oakland Terminal Railways Company, known as the Key Route. The Shattuck Avenue Berkeley line parallels the Key Route line along this street as far as University Avenue. The California Street line parallels the Key Route North Brae line as far as Hopkins Street, Berkeley, where the North Brae line of the Key Route crosses the Company's line going in a northeasterly direction to North Brae. The Ninth Street line comes into close competition with the Albany branch of the Key Route which leaves the North Brae Key Route line a short distance above University Avenue. The line from 16th Street depot to the 14th and Franklin Streets depot parallels the Key Route 22nd line as far as Broadway. The 7th Street line of the Company is in more or less direct competition with the 12th Street line of the Key Route as far as Melrose.

In Alameda the Company is without any competition in its suburban service.

Mr. McPherson, representing the Company, testified that the line between 16th Street depot and the 14th and Franklin Streets depot was built to develop business but not to compete with the Key Route (Transcript pp. 273, 274 and 275). Mr. W. R. Scott, Vice President and General Manager of the Company, testified that the new lines were built and the old lines rehabilitated and electrified for the purpose of taking care of not only the present traffic but to provide for the necessities of the future; also, that from a business point of view, new lines were justified in connection with the rehabilitation of the other lines and to protect the traffic of the Company in the future. He denied that this necessarily meant competition with the Key Route (Transcript pp. 497 and 498).

The Company places a valuation of its suburban electric system and a part of the joint facilities which on its basis of apportionment are properly chargeable to the suburban service, including ferry boats, at the sum of $26,553,667.48. This sum is arrived at by taking the reproduction value of the steam lines as of June 30, 1910, and adding thereto the cost of electrification of the steam lines and construction cost of electric road extensions, and in this manner bringing the total value up to June 30th, 1913.

The Engineering Department of the Commission reports that on the basis of apportionment adopted by the Company its valuation is reasonable and that it could not be reduced to any appreciable extent.

From a statement filed by Engineer Pope of the Company he estimates the value of the steam lines as of June 30,1910.$13,076,698
to which should be added 1,607,634
as the proportion of Oakland Pier chargeable to the
suburban system and. 2,102,324
representing the proportion of the ferry steamers and the boat yards chargeable to the suburban system. Thus according to Mr. Pope's figures, the valuation of the steam lines engaged in the

suburban service as of June 30, 1913-provided the same ferry equipment was necessary in 1910 as is now necessary- we have a valuation of $16,786,656, and the difference between this and the total valuation of $26,553,667, or $10,000,000, represents the cost of electrification and the extensions of various electric lines.

At the time the electrification was completed in 1910, a $3.00 monthly commutation rate and a 10 cent one-way fare were in effect. While the equipment was not entirely worn out it had in effect become obsolescent, and the same may be said for any of the remaining property which could not be used after the electrification took place.

We have no evidence showing the cost of operating before electrification, and while this Commission should under no circumstances suggest that improvements and substitutions, such as those brought about by the Company in electrifying these lines, should be made without hope of return on the part of the agency making them, yet it is well to bear in mind that often it is necessary to build for the future; and if, as a matter of fact, the officials making the substitution were aware that under the then existing arrangement an adequate return would be made, yet under the substituted arrangement such an adequate return could only be expected after a considerable lapse of time, this fact should be considered in passing upon an application to increase rates subsequent to the change. For example, one might own a ferry boat which would be just adequate to handle the existing traffic but which was becoming worn out and would have to be replaced. If the traffic was increasing and wise foresight indicated that within a reasonable time a similar boat to the one in use would not be adequate, such wise foresight would justify the purchase of a boat with capacity in excess of the present needs, but it would not necessarily follow that the interest on the added property and the increased cost of operation should fall upon the present traffic when the larger facility was secured to supply the

needs of future traffic. We shall discuss this aspect of the case further later on.

It is well to note in passing that neither as regards the present property nor the steam equipment for which this property has been substituted is any depreciation or obsolescence taken into account. The valuation presented assumes that the property is as valuable as when new. It should be noted that the ferry boats, for example, are from six to twenty years old, yet their cost to reproduce new is assumed to be their present value. For the purposes of this case it will not be necessary to discuss the question of depreciation in detail, but we have no hesitancy in saying that we do not believe the cost to reproduce new ordinarily represents the present value of the property. This contention is advanced on the theory that inasmuch as the property performs at 100% effeciency therefore it is as valuable as though it were entirely new.

In another case now pending we shall discuss this question of depreciation in detail, but it is worth while to point out in passing that the Company's engineers here have overlooked one important fact and have forgotten that if value is to be determined by the work which can be performed by any agency considered, that the amount of work which can be done in any unit of time is only one of the factors and the second factor is the number of units of time the agency in question will be able to perform this amount of work.

One of the very important issues in this case is the proper apportionment of the facilities used jointly between the suburban traffic and the main line traffic. It is in evidence that the ferry boats and a considerable portion of the other property of the Company in Alameda County are devoted jointly to the suburban and main line traffic. The contention of the Company is, however, that as a rule the apportionment should be made on the basis of the number of passengers carried. There is a further necessity of

apportioning the cost of the suburban service between the electric lines and the boats, and this necessity of apportionment leads to many of the complications in the case.

Oakland Pier is divided on a basis of 50% to the main line traffic and 50% to the electric line traffic on the theory that steam and electric line mileage is equal. Engineer Pope of the Company testified, however, that the center of the Oakland Pier terminal building and the north side were used exclusively for steam trains while the south side was used only for electric trains, and that in his valuation of the Oakland Pier property he had included only the property, tracks and structures at Oakland Pier which were used by electric trains. According to Exhibit 2, as we understand it, it would nevertheless appear that the entire Oakland Pier, including the building, is apportioned on a basis of 50% each to steam and electric lines regardless of the fact that the electric lines occupy only one-third of the ground.

The total value of the floating equipment operating between Oakland Pier and San Francisco is $790,600, assuming this equipment is to have the same value as new equipment. Of this amount $684,659.60 is charged to the electric system on the basis of the number of passengers carried, it having been determined by the Company that 13.4% of the passengers traveling between San Francisco and Oakland Pier used its steam trains and 86.6% traveling over the same route used the electric trains.

The total value new of the floating equipment used in the Alameda Pier service which is exclusively charged to electric lines is $752,567.00.

The Company places the total value of the boat yards at $2,124,954. This valuation is divided between transbay ferry lines and other boat lines on the basis of the cost of repairs to the boats engaged in each particular line of service for the four months' period from January to April, 1914, inclusive. On this basis the Alameda Pier line is charged with 17.5% of the total value of the boat yards, or $372,504.43. The Oakland Pier steam and electric lines

are charged with 15.9%, or $337,867.69, and from this latter amount there is charged to the electric lines on the 86.6% basis the sum of $292,593.41. It is very evident that for some reason the Alameda Pier line is charged with a disproportionate amount inasmuch as it carries by far the smaller number of passengers, even considering the suburban traffic alone, while it is assessed the larger proportion of the value of the property.

The same basis of apportionment of the expense of operating these facilities between the suburban traffic and the main line traffic is used as was adhered to in the apportionment of the property involved, that is on the basis of the number of passengers carried. This basis is departed from in the case of the ferry waiting room which is apportioned on a 50% basis to each class of traffic.

On the basis of apportionment adopted by the Company we have the following estimate of a year's operation of these suburban lines based on the figures for four months, namely, January, February, March and April, 1914:

Operating revenue.	$1,585,404.09	
Operating expense.	1,767,041.28	
Deficit.		$ 181,637.19
Other expenses, taxes, etc		213,449.16
Net operating deficit.		395,086.35
Interest at 7% on $26,908,885.48		1,841,618.46
Gross deficit.		$ 2,236,704.81
Aberage loss per passenger carried		11.7¢

The Company made a four days' check on all of the electric lines to determine the number of passengers patronizing the various lines to arrive at the approximate distance each passenger was carried on the electric system for the purpose of making an apportionment of the revenue between the various electric lines and the boats. This result is contained in the Company's Exhibit 2.

It is in evidence that the franchises granted by the City of Berkeley for certain of the electric lines here involved (Ordinance 550-A, December 11, 1908. Ordinance 58 N.S. of March

29, 1910) contain provisions to the effect that the Company shall maintain a one-way fare of 10 cents and an individual monthly commutation fare of $3.00 between the City of Berkeley and the City of San Francisco. Likewise Ordinance No. 413 of the City of Alameda of January 18, 1904, covering Lincoln Avenue, has a similar provision as does Ordinance No. 414 of the City of Alameda covering Central and Encinal Avenues.

Oakland Pier was constructed by the Company and its predecessors. Much litigation has been carried on between the Company and the City of Oakland over the ownership of this Pier, and finally by agreement the Company was given a franchise for 50 years to operate over the Pier, thereafter the property to revert to the City of Oakland. The Company arrives at a valuation for this Pier and apportions such valuation over the 50 years of the franchise so that within that time it shall have had returned to it the value of this property. It is contended by the protestants that inasmuch as this Pier has been in existence and in use for a considerable period already, in the neighborhood of 30 years, if an arrangement is to be approved whereby its value is to be returned to the Company at the expiration of its right to use it, it must be assumed that it should have returned to it for each one of the 50 remaining years during which the right to use exists 1/80th instead of 1/50th of its value. It is also contended by the protestants that the Alameda Pier is not necessary to this suburban service. It is shown in the evidence that this Pier was originally constructed by the South Pacific Coast Railroad, an independent company, and that when constructed it was the terminus for the line of this company and was used jointly for freight and passenger and for suburban and main line traffic. The contention now is that for the amount of service rendered by the Alameda Pier facilities the value of the property and the operating expenses are excessive.

The Foothill Improvement Club and Henry Warfield, com-

plainants in the two cases here involved, as well as the East Oakland Protective League in its cross-complaint, base their contention for a lower rate to Dutton Avenue on the existing rates to Stonehurst, which contemplates an electric service to Melrose and a steam service from Melrose to Stonehurst. It is also urged that the jump in the commutation rate beyond Seminary Avenue is unjustified. The present one-way fare from San Francisco to Stonehurst is 15 cents and the monthly commutation rate $5.00, the distance is 14.3 miles. The one-way fare between Oakland and Stonehurst, which includes all points on the 7th Street local line as far west as West Oakland station, is 5 cents. The distance from West Oakland station to Stonehurst is 9.3 miles. The monthly commutation rate from Oakland to Stonehurst is $2.50, but this rate does not apply west of Broadway. The distance from Broadway to Stonehurst is 7.6 miles. The monthly commutation rate from Oakland First Street or 7th and Broadway to San Leandro, a distance of 8.1 miles, is $2.50 by way of the electric line to Melrose and the steam line thence to Stonehurst. Or if the passenger boards the train at First and Broadway this rate applies for the steam line service over the entire distance. From First and Broadway or Seventh and Broadway to Hayward, a distance of 13.4 miles, the commutation rate is $3.00. It is, therefore, pointed out that for the additional distance of 5.3 miles to Hayward beyond San Leandro but 50¢ is added to the monthly commutation rate to San Leandro, while for a distance of .8 mile between Seminary Avenue and Havenscourt on the Melrose extension the rate jumps from $3.00 to $4.75. The Company contends that the rate to Hayward was put in in competition with the Oakland Traction Company's electric line to Hayward, but the fact remains that the Oakland Traction Company's rate at the time this $3.00 commutation rate to Hayward was established was $5.00 between Oakland and Hayward.

As bearing upon the alleged discrimination in denying to points on the Dutton Avenue line the 5 cent fare to other points in Oakland, it is pointed out that the 5 cent fare applies from all

points on the 7th Street line to Stonehurst and that the distance from West Oakland to Stonehurst is 9.3 miles. Likewise the fare from West Oakland by way of the Horse Shoe line to Alameda for a distance of 9.7 miles is 5 cents. The fare, however, from West Oakland to a point 9.7 miles from West Oakland on the Melrose extension, about 105th Avenue, is 20 cents, and from 7th and Broadway to Dutton Avenue, a distance of 8.9 miles, the fare is 20 cents.

It is urged that the practice of the Company to charge 5 cents between Stonehurst and all points within the city limits of Oakland on this line is discriminatory against the points on the Melrose extension in that for similar and shorter distances as high as 20 cents is charged.

The foregoing statement covers the substantial points brought out in the evidence. Very little controversy exists as to many of the facts, but wide divergence of opinion is found with reference to the significance of such facts. It is proper preliminary to a decision herein to discuss the various controverted questions. These are:

1. Apportionment between main line and suburban traffic;
   (a) Value of property;
   (b) Expense;
   (c) Depreciation.
2. Competitive lines.
3. Justification for electrification, with particular reference to present and future traffic.
4. Justification for segregating suburban traffic from entire business of road.
5. Effect of the voluntary according by the Company of the rates now sought to be raised.
6. Discriminatory character of rates between Oakland points.

1. Apportionment between Main Line and Suburban Traffic.

We have already discussed the question of depreciation and obsolescence to a sufficient extent to indicate our opinion with reference thereto and we need not further consider that subject here. A discussion of the apportionment of the value of the property and the expense of doing the business between suburban and main line traffic may be properly carried on together. We can see no justification for the position assumed by the Company with reference to the cost of the pier and the distribution of the expense. This important property is now sought to be treated by this Company exactly as though it were owned in fee simple. That is, it is assumed that during the 50 years' right to use remaining to the Company there shall be returned to the Company annually an interest upon the entire value, and in addition thereto, a sufficient amount so that at the expiration of the term the Company shall have received an amount equal to the total present value of the property. In other words, it is assumed that a reversionary interest belonging to the City of Oakland is at the present time valueless. With this contention we do not agree. Assuming that this property has been in use 30 years, which, added to the 50 years yet remaining, would make a total of 80 years during which time the Company will have used this facility, it cannot even then, as contended by the protestants, be logically held that 1/80th of the present value shall be returned annually to the Company. Where, as here, a utility has made improvements upon a property to which it has no title, the most that could be expected by such utility would be the return of the cost incurred by it, and there should be added to its expense the fair rental value of the property used during the term. Under the theory of the Company here, while the City of Oakland, as a municipality, will not have been required to pay this Company for the property which the Company does not own, yet the residents of Oakland, Alameda and Berkeley, in fares, will be required to do so, if the contention

of the Company is correct. In short, the Company is in no worse position if we grant it what it asks in this regard than though this property belonged to it outright. We do not intend to suggest a substitute for the theory advanced by the Company or the one urged by the protestants. In a proceeding such as this, wherein rates are to be raised, the burden must be assumed by the Company to prove its contention, and while it is not for this Commission, under any circumstances, to resort to technicalities in order to bring about any particular result, yet, under the peculiar circumstances of this case, more than any other case presented to this Commission, the strictest adherence to proof on the part of the company seeking to raise these rates must be insisted upon. We shall discuss the reason for this position in another branch of the case.

Considerable discussion and some evidence was introduced touching the character of the suburban business as being a by-product of the main-line traffic. Likewise, it was urged that we were as much justified in assuming the main-line traffic to be a by-product of the suburban traffic. The situation is very simple with reference to this matter. It may be urged that the proper way to determine the portion of the property and expense rightly chargeable to the suburban traffic, is to assume the elimination of the main-line traffic and then determine how much property would be used and how much expense incurred in conducting the suburban traffic alone. With equal plausibility, however, it may be urged that the same method may be adopted in determining the property and expense necessary for the main-line traffic. Adopting one of these theories in one instance and the other in another, it readily appears that we shall have a combined property and a combined expense much in excess of the property and expense actually found necessary for the combined business. Unquestionably, from the evidence, a somewhat greater investment in ferry boats would be required to handle the ferry traffic alone than would be required to handle the main-line

traffic alone. But the evidence does not convince us that this is true with reference to any other expense or any other property, but we disagree so entirely from the Company in its apportionment that we shall not consume much space in a discussion of it. It is unquestionably true that if either of this business is by-product, it must be the suburban traffic. Take the condition which confronts the Santa Fe or the Western Pacific and if these companies had as much main-line traffic as the company here involved, we would be in a position directly to determine the amount of property and expense necessary to carry on the main-line traffic. However, these companies do not, of course, transact nearly as much main-line passenger business into and out of San Francisco as the Southern Pacific Company does over its Oakland Pier route, and so it is impossible to make a comparison. However, it appears from the evidence and, of course, is a matter well known to all familiar with this situation, that the important business to the Company is its main-line traffic. Extraordinary expense may be required to transact a necessary portion of a railroad's business, which expense would not be justified if it were not for the fact that the entire or a great portion of the business of the road is dependent thereon. The Southern Pacific Company must operate these ferry boats for its main-line traffic and must maintain its terminal facilities at the Oakland Pier. Its failure to do so would be disastrous to its San Francisco passenger business. Therefore, every suburban passenger carried on every boat which is necessary for the transcontinental or local main-line business of this carrier is by so much an advantage. The same may be said of every item of its expense incurred and every portion of its facilities used jointly between the two kinds of traffic. The franchises for joint facilities are also thus affected.

It is a fundamental rule recognized by all carriers and by other utilities as well--and as far as that is concerned, by

all businesses--that ordinarily, as the amount of traffic or business increases, the cost per unit decreases. If this were not true, it would be hard to account for the great number of freight and passenger agents constantly seeking business and the great number of commercial travelers and solicitors doing likewise for other classes of business in competitive industry. The ability to get a large amount of business always redounds, partially, at least, to the benefit of the patrons of such business, due to the fact that if the business is purely competitive and there be no combinations, those in control of such business always have a tendency to accord to their patrons the lowest rate which may be accorded and leave the business profitable. In the case of natural monopolies, such as railroads, where of necessity competition cannot have full sway, one of two forces must bring about the same result, namely, fear of future competition if the rates are maintained on too high a scale, or regulation. The former of these forces is always less effective as the magnitude of the enterprise and the cost to carry it on increases.

By reason of these fundamental considerations, it should always result that as business increases in volume the agency in control of such business, if it be a regulated industry, must transact each unit of such business at a smaller expense to the patron. The service performed for the transcontinental or local main-line passenger by the terminal and bay facilities of the Southern Pacific Company cannot from its very nature be compared to the service performed for the local suburban passenger. The service performed for the main-line passenger is an essential part of a large service, essential to such service and without which such service could not be rendered. The patron of the railroad enjoying such service has a right to be protected from higher charges by reason of such service being performed jointly with some other service and, in fact, a proper portion of the saving, if a saving be made by reason of the

joint service, such patron has a right to demand. The cost to him of his entire service may be five or one hundred dollars, where the necessary cost to the commuter may be five or ten cents. To the main-line passenger, both from the standpoint of the necessary expense which can be incurred by the Company in order to secure this traffic and the value of this service to the patron, so often urged by the railroad lawyer, the rate may legitimately be higher. In short, from the standpoint of what the traffic will bear, a sufficient and legitimate doctrine if properly understood and circumscribed but not as usually urged by the carriers, the apportionment here must fall, for the limiting maximum rate beyond which the carrier may not go and hold his traffic is always the amount the patron can afford to pay, while the limiting minimum rate below which the carrier cannot afford to do the business is the actual added cost to the carrier of such business over the cost such carrier must for other and independent reasons incur. In short, it has appeared to us that both the courts and commissions have been in error in determining the lowest rate that a utility may reasonably and lawfully afford. This rate, the courts and commissions to the contrary, notwithstanding, may be and often is below the actual cost of performing an average unit service. For example: in the case of a hydro-electric company, it may be that the actual units of power available, cost unit for unit, a certain amount in actual out-of-pocket expenditure. Therefore, if we view this subject superficially, we would immediately say that this company could not afford to furnish its commodity at a less rate than the actual out-of-pocket cost per unit. But on inspection, it may appear that by reason of the impossibility of operating in every instance to maximum efficiency, there is excess of property and excess expense incurred in performing the total service performed at any one time, which will not be appreciably, if at all, increased by performing some additional service. Therefore, when it becomes a

question of performing or not performing the additipnal service, under the circumstances stated, the utility does not and should not look to the average expense of performing the unit of service, but looks to the added cost and the added revenue alone, which added cost may be much less than the average cost per unit and which added revenue may be less than the average revenue that must be required per unit. Therefore, in determining whether or not such added business shall be done, the considerations we have herein discussed are the ones a wise economy will require to be studied.

Suburban traffic is essentially a wholesale traffic. Suburban rates are essentially wholesale rates. Therefore, it is violative of fundamental rules of rate-making to apply units of expense and enforce divisions of property on an equality with a service which is essentially different and essentially retail. Therefore, without going into this matter further, it conclusively appears to us that such a fallacy exists in the method of apportionment, both of property and expense, between main-line and suburban business that here again it may be said that the Company has not sustained its burden of proof.

2. Competitive Lines.

In discussing the evidence, it has already appeared that many of the lines of this Company are in direct competition with the lines of the San Francisco-Oakland Terminal Railways. We have so often expressed ourselves on this question that we think it unnecessary to again discuss it extensively. Competition between natural monopolies and regulation of natural monopolies are inconsistent. If competition is to exist between natural monopolies and the rights of the public are to be enforced through competition, then the State should go no further than to see to it that actual competition exists and that no combinations of the slightest binding effect are permitted.

Under such competitive arrangement there will be the tendency on the part of the owners, if absolutely independent from their beginnings in the money sources down to their actual minutest operations, to take the smallest return on their investment possible and to enforce the greatest economies that can be brought about. Inevitably, if any patron or any locality is so unfortunate as to be outside the influence of this competitive force, such patron and such locality, in the absence of regulation, must expect to pay every cent that can be extorted, unless the conditions are such that the fear of competition and of rivalry for the business of such patron or community minimizes the severity of the extortion.

On the other hand if regulation is to assume the function that it is attempting to assume in most of the states and in the Federal government, as far as railroads are concerned, it can enforce, if it is adequate to the job, the efficiency and the economy that we have shown competition tends to enforce without the duplication. The total sum which is necessary to be paid for service by a natural monopoly will, of course, be less if the minimum amount of investment which is required to perform the service be made. This is so simple that we are at a loss to understand the difficulty with which some people grasp it. It will be noted that we have said "the sum necessary to be paid". Of course, under inadequate regulation the sum that is paid is often greater and the service that is performed is usually inferior without competition than with it. But it does not follow from this that with strong laws and competent officials to enforce them one street railway line on a street cannot be required to furnish a better service at a lower rate than can be accorded by two street car lines doubling the investment and dividing the revenue. Regardless of the position which may be assumed in favor of competition or regulation of natural monopolies, still it is certainly true that the public should not be required to accept the evils of both. The evils of competition are duplication of facilities and a necessarily high cost per unit of service. The evils of monopoly in a natural monopoly field are disinclination on the part of those in control of such monopoly to give good service and to accord reasonably low rates. In the case at bar we have it urged that the entire value of competing lines and the entire expense of operating them shall be saddled upon the patrons, regardless of the fact that these lines are admittedly not operated nearly to efficiency. Neither the law nor justice requires this to be done. The attitude of city authorities, however, too often possessed of a merely superficial understanding of the important questions involved, in giving franchises to competing natural monopolies bringing about such duplication of

facilities, as unquestionably exists in this case, should be condemned, unless such city authorities incorporate conditions in the franchises granted which will require the utility accepting the franchise to accord as low a rate and as good a service as can be forced if the facilities are not duplicated; and unless further, such local authorities have a right to expect that they can force the performance of a service demanded in a franchise, even though the agency accepting the franchise has not the financial ability so to do.

It should be borne in mind, however, even by the most superficial that service must be paid for by some one. If the one legally obligated to perform it is financially unable by reason of the conditions imposed to perform, some one else will have to be substituted. ~~Except~~. Patrons cannot secure service for less than the cost of performing it, unless some one else pays the difference between the actual cost and that received. In other words, even boards of city trustees cannot force the impossible.

We do not believe that under the circumstances under which certain suburban lines of the Company were constructed in Oakland and Berkeley, this Company has a right to impose upon its patrons a rate sufficient to return to it the amount which otherwise should be returned, on the ground that it has constructed facilities in excess of the necessities of the patrons.

3. Justification for Electrification with Particular Reference to Present and Future Traffic.

We believe without question that the Company was justified in the electrification of these lines. We are, however, not of the opinion that it was justified in the construction of some of the added lines, except in contemplation of increased traffic in the future. Utilities are always required to have an eye to the future and they should ultimately be paid for the expenditures made.

But one of the elements always urged in a valuation case as a part of the value of the property is the cost of development of business and the interest on the money necessarily idle during the development period. If the development period is not too long and the lines are wisely constructed, there can be no question that a proper return should ultimately be had from subsequent traffic. But it is idle to urge that where facilities are constructed in excess of present needs that the rates to the present comparatively few patrons should be so arranged as to give an immediate return. The Supreme Court of the United States has many times discussed this, and of course the rule is well established that facilities constructed in excess of the needs of the patrons may not be made the basis for unreasonable burdens upon the present consumers. Except in the case of certain paralleling competitive lines, we have no question that ultimately the great development that is to come to Alameda County will repay the Company for its forehandedness in electrifying and improving these lines. But we do not believe that the officials who advised the electrification and the extensions of these lines for a moment expected at the time of such improvement that the rates would be other than those that have existed so long. The record conclusively shows, as heretofore pointed out, that it was understood when these lines were constructed and these improvements made, that such construction and such improvements were made in contemplation of future rather than present needs.

4. Justification for Segregating Suburban Traffic from Entire Business of Road.

We have already discussed in the first division of these comments the fundamental principles involved in this question. The Company, however, having failed in sustaining its burden with reference to the proper segregation of property and expenses between suburban and main line business, we believe more than ever we are justified in looking to the general financial condition of this carrier.

As we have already said, the main line passenger has a right to protest if his rates are made high by reason of the suburban traffic. Such, however, has not been shown to be and we do not believe is the fact. Regardless of the protestations of the representatives of the Company to the contrary, it is our opinion that this suburban traffic is a good thing for the Company and that it does not add in anywise to the burden of the main line passenger or to the shipper of freight. But even if temporarily there should be a loss we have already pointed out that such loss may be justified in contemplation of future business and that some of this loss may be borne by the stockholders of this Company by reason of the building of unnecessary competitive lines.

Testimony was introduced showing the general financial condition of this Company, and while at the present time it is difficult for anyone to borrow money, still this Company is in very good financial shape and is xx carrying on an extremely profitable business. In fact it is in evidence that these very suburban lines were built in their entirety from earnings, as is likewise the case of the double tracking across the Sierras and various other improvements that have been and are being made by this Company, and this in addition to a 6% dividend upon its stock. All of which indicates that this Company is making, viewing its business as a whole, much beyond 6% net because the re-investment from earnings in capital account, of course, is as much in effect a dividend as the actual taking of the money from the treasury by the stockholders.

5. Effect of the Voluntary According by the Company of the Rates now Sought to be Raised.

For many years the rates here involved have been in effect. We hear much of confiscation on the part of utilities, and it is now being urged that confiscation results when anything less than the current rate of interest is earned. While, of course, we cannot

agree that from a strictly legal viewpoint such a contention is correct, yet we are very willing to admit that regulating bodies should never aim to make their rates so low as just to avoid legal confiscation. In the case here involved, however, we feel no hesitancy in saying that the strictest presumptions of law should be adhered to against this Company, not for the purpose of confiscating its property but for the purpose of preventing the confiscation of tremendous values in the property of the residents of Alameda County. Thousands upon thousands of people have built their homes in these suburban communities and have paid prices for their property in contemplation of the reasonableness of these rates voluntarily accorded by this carrier. When through a long period of years a transportation company has voluntarily accorded a rate to a community on the faith of which large investments have been made, and when again the same agency has voluntarily and under no legal compulsion incurred great expenditures and largely extended its facilities, the prima facie reasonableness which attaches to voluntarily accorded rates becomes, if not conclusive, very strongly persuasive upon any regulatory authority.

An increase of the commutation rate alone will confiscate or take away from (the term used is immaterial) the value of the residences of every person in the territory here involved who is forced by business reasons to commute to San Francisco. Confiscation in this case looks both ways, and it does not lie in the mouth of this carrier to urge its own confiscation in utter disregard of the confiscation which it, if permitted to have its way, will have brought about among innocent people who are its patrons. Besides, we do not treat as lightly the provisions in the franchises granted by the municipalities involved as the Company seems willing to do. While one may be able legally to avoid a voluntarily assumed obligation, still such a one should not be permitted to invoke the rule laid down for the benefit not of itself but of third parties. The rule

that contracts of public utilities may be avoided is a rule of public policy and does not at all subtract from the moral obligation of the contracting parties. If any one has taken advantage of his power to extort to make an unconscionable contract, or if a utility has entered into a contract, the enforcement of which will work a hardship upon patrons not parties thereto, such contract may be set aside not in the aid of the party offending but in the aid of innocent people. Regardless of the enforcible provisions of these franchises, the Company having accepted the benefit with these conditions annexed should in good conscience be required to assume the burden.

6. Discriminatory Character of Rates Between Oakland Points.

As already pointed out, the Public Utilities Act provides that no fare in excess of 5 cents shall be charged between two points in the same municipality, except on approval of the Railroad Commission.

Such a mass of confusion exists on the lines of this Company with reference to this 5 cent fare that it becomes a difficult matter to adjust. We assume that the theory upon which the Legislature passed this Section was the same as that announced by the Supreme Court of the United States in the Russell case, and is that the franchise to do business within a municipality exists as to all portions of the municipality, and such being the case a uniform rate might apply both for short and long distances.

However this may be, the amount of traffic is inconsiderable and we do not believe the evidence in this case justifies the Commission to make an exception from that imposed by law, with the possible exception of the rate applying to and from Oakland Pier. No one except those desiring to take the trains of the Company ordinarily need go to Oakland Pier. It is not a portion of the business or residence section of the City, and certainly no street car character-

istic exists with reference to any traffic into or out of this Pier. As far as the 7th Street line is concerned and other lines in the City of Oakland, while they are not essentially street car lines, still operating on the public streets and stopping at comparatively short intervals they furnish for some people a substitute for street car service.

We, therefore, shall recommend an exemption from the 5 cent fare provided by the Public Utilities Act with reference to trips to and from Oakland Pier alone.

As to the fare between West Oakland and 16th Street and all other portions of the City of Oakland, the uniform 5 cent fare as provided in the Public Utilities Act should be established.

We are of the opinion that the Company has been very considerate of the people of the east bay territory in the extension of its lines and the extension of its $3.00 commutation and 10 cent single fare rates. Such fares when not voluntarily accorded, of course, must end somewhere. We are of the opinion that as to the portions of these east bay cities and Alameda County other than those points to which the $3.00 commutation rate and the 10 cent single fare rate have been heretofore voluntarily accorded or established, the Company should not be required to accord them. There is such a mass of confusion, however, with reference to this matter and so much inconsistency that we think it will be better for the representatives of the Company, the protestants and the Rate Department of this Commission to get together with a view to arranging a uniform and proper scale of commutation and single fare rates between San Francisco and points not now accorded the $3.00 monthly commutation rate and the 10 cent single fare rate. It should be understood that the inclination of the Commission is to hold that Seminary Avenue and the other outside points to which these fares apply shall be the limit for the present time of such fares, and that they should be graded up to territory beyond such points. As far as the Stone-

hurst line is concerned, it would appear from a comparative standpoint that these rates are low, and it may be necessary, if a final order shall be entered in this particular branch of the case, to raise some of these rates in order to make the scale of rates consistent.

It may appear that we do not appreciate the diligent effort of the Company to present all of the facts surrounding this case. We do appreciate this, and we also appreciate the fact that this Company is giving a tremendously valuable and efficient service to these Alameda County points, and while, as we have said herein, the Company should be held more strictly to account in according these rates in the future which it has voluntarily accorded so long in the past and on the faith of the continuance of which so many people have acted, yet we do not believe that this should be made the basis for forcing this Company by reason of alleged discriminations further to extend these commutation rates to territory not presently profitable, nor order that these rates should be taken as a basis for comparison in other territory not similarly affected. The fact that this trans-bay service to Alameda County points is of such a nature as it has been found to be and was admittedly in the beginning entirely and is still largely a by-product service, added to the further fact that the traffic is very dense for a considerable portion of the day, makes it improper to compare this service with other service where such conditions do not exist. The facts in any other case presented to this Commission must determine such case; and it might be that conditions exist that justify for similar distances even a lower rate, or they might justify a much higher rate. The mere fact that these rates are accorded for a prescribed distance in Alameda County means no more as a basis for comparison than the comparative rates presented by the Company in this case for similar distances in other localities under dissimilar conditions.

We have given this case a great amount of study and have endeavored to the best of our ability to set out the reasons which

move us to the determination upon which we have decided.

We suggest to the people of Alameda County, particularly those engaged in the opening up of new tracts for settlement, that they in the future should not proceed on the assumption that this Commission will require this Company further to extend its $3.00 monthly commutation rate.

We submit the following order:

O R D E R .

The Southern Pacific Company having filed its Applications Nos. 860, 861 and 1105, and Henry Warfield having filed his complaint No. 519 and Foothill Improvement Club having filed its complaint No. 517, which various applications and complaints bring to issue the commutation and one-way fares between San Francisco and certain indicated Alameda County points, and likewise certain commutation and single fare points within the County of Alameda, and by agreement all of these cases having been combined, and a hearing thereon having been heard, and being fully apprised in the premises,

IT IS HEREBY ORDERED that the applications hereinabove referred to be and the same are hereby denied.

IT IS FURTHER ORDERED that the complaints hereinabove referred to be and the same are hereby dismissed.

IT IS FURTHER ORDERED that within twenty (20) days from the date hereof the Southern Pacific and the other interested parties herein present in writing to this Commission their proposed schedule of rates to and from the points beyond Seminary Avenue and upon the Stonehurst line both for commutation and single fares, in accordance with the suggestion made in the opinion hereto.

Unless an amicable arrangement of those issues not determined herein can be reached this Commission will make a subsequent order with reference thereto, and those portions of the

applications and complaints applying to the rates here involved are reserved for such future determination.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of October, 1914.

John M Eshleman

Alex Gordon

E O Edgerton

Max Thelen

Commissioners.